



JPW

Docket No. 75723-ZB/JPW/GJG/CS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: David Baltimore et al.

Serial No.: 10/037,415

Examiner: D. Guzo

Filed : January 4, 2002

Group Art Unit: 1636

For : NUCLEAR FACTORS ASSOCIATED WITH TRANSCRIPTIONAL  
REGULATION

1185 Avenue of the Americas  
New York, New York 10036  
October 8, 2008

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

In accordance with their duty of disclosure under 37 C.F.R. §1.56, Applicants direct the Examiner's attention to the following disclosures, which are also listed on the attached substitute Form PTO-1449 (**Exhibit A**).

Applicants note that items 1-2 listed herein are part of a concurrent litigation captioned *Ariad Pharmaceuticals, Inc., et al., v. Eli Lilly and Co.* Items 3-34 are part of a concurrent litigation captioned *Amgen Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.* Both litigation proceedings involve U.S. Patent No. 6,410,516, which issued from a parent of the subject application.

Applicants further note that items 1-34 were previously submitted to the U.S. Patent and Trademark Office on October 8, 2008, in connection the copending merged reexamination

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 2 of 9 of Supplemental Information Disclosure Statement

proceeding of U.S. Patent No. 6,410,516, for which the subject application relies on for an earlier effective priority date under 35 U.S.C. §120. In accordance with 37 C.F.R. §1.98(d), copies of items 1-34 are not enclosed herewith but are readily available to the Examiner from the file history of U.S. Patent No. 6,410,516 and its merged proceeding of *Ex Parte* Reexamination Control Nos. 90/007,503 and 90/007,828.

The Examiner is respectfully requested to make the items of record in the subject application by initialing and dating the attached substitute Form PTO-1449, and returning a copy of the initialed and dated form to Applicants' undersigned attorneys.

1. Brief of Defendant-Appellant Eli Lilly and Company, filed June 18, 2008, in the concurrent litigation captioned *Ariad Pharmaceuticals, Inc., et al., v. Eli Lilly and Co.*, U.S. Court of Appeals for the Federal Circuit, Appeal No. 2008-1248;
2. Brief for Plaintiffs-Appellees, filed September 26, 2008, in the concurrent litigation captioned *Ariad Pharmaceuticals, Inc., et al., v. Eli Lilly and Co.*, U.S. Court of Appeals for the Federal Circuit, Appeal No. 2008-1248;
3. May 22, 2008 Defendant's Memorandum in Opposition to Amgen's Motion to Preclude the Opinions of Dr. Kathryn Calame Relating to Experiments Conducted by Dr. Joel Pomerantz, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
4. May 22, 2008 Defendant's Memorandum in Opposition to Amgen's Partial Motion to Preclude Ariad's Proffered

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 3 of 9 of Supplemental Information Disclosure Statement

Experts on Willfulness and Lack of Inequitable Conduct, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;

5. May 22, 2008 Defendant's Memorandum in Opposition to Amgen's Motion for Summary Judgment of Noninfringement, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
6. May 22, 2008 Defendant's Memorandum in Opposition to Amgen's Motion to Preclude Certain Opinions of Dr. Jeffrey v. Ravetch, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
7. May 22, 2008 Defendant's Memorandum of Law in Opposition to Amgen's Motion for Summary Judgment on Willfulness, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
8. May 22, 2008 Defendant's Brief in Opposition to Amgen's Motion for Summary Judgment for Lack of Adequate Written Description, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
9. May 22, 2008 Defendant's Memorandum in Opposition to Amgen's Motion to Preclude the Testimony of Dr. Ryan Sullivan, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 4 of 9 of Supplemental Information Disclosure Statement

10. May 22, 2008 Defendant's Rebuttal Brief on Claim Construction, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
11. May 22, 2008 Amgen Entities' Answering Brief in Opposition to Ariad and the Institution's Motion for Partial Dismissal for Lack of Subject Matter Jurisdiction, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
12. May 22, 2008 Amgen Entities' Answering Brief in Opposition to Ariad and the Institutions' Motion for Partial Summary Judgment on Inequitable Conduct, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
13. May 22, 2008 Amgen Entities' Answering Brief in Opposition to Ariad and the Institutions' Daubert Motion to Preclude Expert Testimony of the Honorable Gerald J. Mossinghoff and Dr. Aaron Ciechanover, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
14. May 22, 2008 Amgen's Answering Brief on Claim Construction, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
15. June 6, 2008 Reply Memorandum in Support of Defendants' Motion for Partial Dismissal for Lack of Subject Matter

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 5 of 9 of Supplemental Information Disclosure Statement

Jurisdiction, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;

16. June 6, 2008 Reply Memorandum in Support of Defendants' Motion for Partial Summary Judgment on Inequitable Conduct, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
17. June 6, 2008 Reply Memorandum in Support of Defendants' Motion to Preclude Expert Testimony of Mr. Gerald J. Mossinghoff and Dr. Aaron Ciechanover, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
18. June 6, 2008 Amgen Entities' Reply Brief in Support of Their Motion for Summary Judgment of Invalidity of U.S. Patent No. 6,410,516 for Lack of Adequate Written Description Under 35 U.S.C. § 112, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
19. June 6, 2008 Amgen Entities' Reply Brief in Support of Their Motion for Summary Judgment of Noninfringement of U.S. Patent No. 6,410,516, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
20. June 6, 2008 Amgen Entities' Reply Brieg in Support of Their Motion for Summary Judgment of Non-willfulness, in the concurrent litigation captioned *Amgen, Inc., et al.*

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 6 of 9 of Supplemental Information Disclosure Statement

- v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
21. June 6, 2008 Amgen Entities' Reply in Support of Their Daubert Motion to Preclude Certain Unsupported and Unreliable Opinion of Dr. Ryan Sullivan Relating to Damages, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
  22. June 6, 2008 Amgen Entities' Reply Brief in Support of its Daubert Motion to Preclude Certain Proffered Opinions of Dr. Jeffrey v. Ravetch Relating to Written Description and Inherent Anticipation, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
  23. June 6, 2008 Amgen Entities' Reply Brief in Support of Their Daubert Motion to Preclude Certain Inadmissible Opinions of Dr. Kathryn Calame Relating to Experiments Performed by Dr. Joel Pomerantz, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
  24. June 6, 2008 Amgen Entities' Reply Brief in Support of Their Motion to Preclude Ariad's Proffered Experts on Willfulness and Inequitable Conduct from Opining on Intent, State of Mind, and Other Matters, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
  25. September 19, 2008 Memorandum and Order on Claim Construction, in the concurrent litigation captioned

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 7 of 9 of Supplemental Information Disclosure Statement

*Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;

26. September 19, 2008 Memorandum and Order on Defendant's Motion for Partial Dismissal for Lack of Subject Matter Jurisdiction and Motion for Summary Judgment on Inequitable Conduct, in the concurrent litigation captioned *Amgen, Inc. et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
27. September 19, 2008 Memorandum and Order on Plaintiff's Motion for Summary Judgment for Noninfringement of U.S. Patent No. 6,410,516, in the concurrent litigation captioned *Amgen, Inc. et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
28. September 23, 2008 Defendant's Motion to Dismiss or for Judgment Pursuant to Fed. R. Civ. P. 54(b), in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
29. September 25, 2008 Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss or for Judgment Pursuant to Fed. R. Civ. P. 54(b), in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
30. September 26, 2008 Defendant's Reply Memorandum in Support of Their Motion to Dismiss or for Judgment Pursuant to Fed. R. Civ. P. 54(b), in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad*

Applicants : David Baltimore et al.

Serial No. : 10/037,415

Filed : January 4, 2002

Page 8 of 9 of Supplemental Information Disclosure Statement

*Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;

31. September 26, 2008 Amendment to the September 19, 2008 Memorandum and Order on Plaintiff's motion, in the concurrent litigation captioned *Amgen, Inc. et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
32. October 3, 2008 Memorandum Order Granting in Part and Denying in Part of Defendant's Motion to Dismiss or for Judgment Pursuant to Fed. R. Civ. P. 54(b), in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT;
33. October 3, 2008 Judgment in Favor of Amgen Inc, et al., in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT; and
34. October 6, 2008 Notice of Appeal to the Federal Circuit, in the concurrent litigation captioned *Amgen, Inc., et al. v. Ariad Pharmaceuticals, Inc., et al.*, U.S. District Court for the District of Delaware, CA No. 06-259-MPT.

This Supplemental Information Disclosure Statement is being submitted under 37 C.F.R. §1.97(c)(2), before the mailing of a Final Office Action. Accordingly, Applicants enclose a check in the amount of ONE HUNDRED AND EIGHTY DOLLARS (\$180.00) for filing this Supplemental Information Disclosure Statement.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants'



Applicants : David Baltimore et al.

Serial No. : 10/037,415

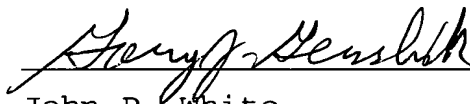
Filed : January 4, 2002

Page 9 of 9 of Supplemental Information Disclosure Statement

undersigned attorneys invite the Examiner to telephone them at the number provided below.

No fee, other than the enclosed \$180.00 fee for filing a Supplemental Information Disclosure Statement, is deemed necessary in connection with filing this Supplemental Information Disclosure Statement. However, if any fee is required, authorization is hereby given to charge the additional amount of any such fee to Deposit Account No. 03-3125.

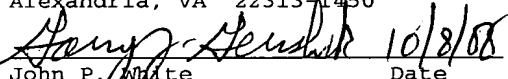
Respectfully submitted,



John P. White  
Registration No. 28,678  
Gary J. Gershik  
Registration No. 39,992  
Attorneys for Applicants  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, New York 10036  
(212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450



John P. White  
Reg. No. 28,678  
Gary J. Gershik  
Reg. No. 39,992

Date 10/8/08

# **EXHIBIT A**

## **of Supplemental Information Disclosure Statement**

Applicants: David Baltimore, et al.  
Serial No.: 10/037,415  
Filed: January 4, 2002  
Group Art Unit: 1636  
Examiner: D. Guzo

---